

FILE COPY

Office-Supreme Court, U.S.

FILED

JUN 1 1962

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**RESPONSE OF THE STATE OF NEW JERSEY TO
PRAYERS FOR TEMPORARY INJUNCTION CON-
TAINED IN PARAGRAPHS 3 AND 4 OF MOTION
FOR LEAVE TO FILE BILL OF COMPLAINT.**

ARTHUR J. SILLS,
Attorney General of New Jersey.

THEODORE I. BOTTER,
Assistant Attorney General of New Jersey.

CHARLES J. KEHOE,
Deputy Attorney General of New Jersey.

State House Annex,
Trênton, New Jersey,

*Attorneys for Defendant,
The State of New Jersey.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**RESPONSE OF THE STATE OF NEW JERSEY TO
PRAYERS FOR TEMPORARY INJUNCTION
CONTAINED IN PARAGRAPHS 3 AND 4 OF
MOTION FOR LEAVE TO FILE BILL OF COM-
PLAINT.**

The State of New Jersey, defendant, by Arthur J. Sills, its Attorney General, pursuant to order of this Court, responds to the prayers for temporary injunctions contained in paragraphs 3 and 4 of Motion to File Bill of Complaint by plaintiff, State of Texas as follows:

I.

There is presently pending in the Superior Court of New Jersey, Chancery Division, a civil action by the State of New Jersey against Sun Oil Company, a New Jersey corporation, (Docket No. C-192-61) wherein New Jersey seeks a judgment directing the defendant to deliver to the State Treasurer of New Jersey for safekeeping, monies

payable by Sun Oil Company for unclaimed wages, interest, dividends and other general cash obligations, said monies being payable to persons who have been and remain unknown for a period of 5 successive years or whose whereabouts have been and remain unknown for the period of 5 successive years or which monies have been and remain unclaimed for the period of more than 5 successive years.

II.

A pretrial conference was held in said action in the Superior Court of New Jersey resulting in the entry of a pretrial order on March 29, 1962. Contrary to the allegations of the State of Texas in paragraph 8 of the Motion For Leave to File Bill of Complaint, said order did not overrule the defense "that the property involved in said suit is being claimed by other states under their escheat laws."

The pretrial order expressly provides that the legal issues to be determined at the trial are:

(A) In the absence of any state other than the State of New Jersey, and the persons entitled to unclaimed dividends, wages and general cash obligations from this proceeding and the jurisdiction of this Court, can this Court enter a judgment against defendant based upon claims to wages earned outside the State of New Jersey, to general cash obligations which arose out of transactions which were not exclusively within the State of New Jersey, which claims are payable to residents or nonresidents of New Jersey, and based upon dividends or wages payable to persons whose last known addresses were not within the State of New Jersey.

(B) Violation of "due process" clause under the United States Constitution in exposing defendant to double escheat of property.

(C) Res judicata and estoppel.

III.

Said action is custodial in nature, and the claims against Sun Oil Company for the monies paid to the State of New Jersey for safekeeping thereupon are transferred against and become the obligation of the State of New Jersey. (N.J. S. 2A:37-33). No action to escheat such monies delivered to the State Treasurer of New Jersey for safekeeping can be taken until at least two years after the entry of judgment for custody. (N.J.S. 2A:37-34). The State of Texas will not be injured if New Jersey takes custody of the subject unclaimed property.

IV.

New Jersey admits that the State of Texas is actively pressing a claim for the unclaimed personal property held by Sun Oil Company which is subject to the provisions of N.J.S. 2A:37-29, *et seq.* New Jersey denies that such unclaimed property held by the Sun Oil Company has any *situs* within the State of Texas or any state other than New Jersey to support the exercise of a state's sovereign power to take custody of such property for the benefit of the owner who is unknown or whose whereabouts is unknown.

V.

Without prejudice to New Jersey's claim that *situs* of the personal property involved, for the purpose of custody and escheat by a sovereign state, is exclusively within New Jersey, and for the sole purpose of expediting the disposition of the present application of the State of Texas, New Jersey, with the consent of the Sun Oil Company, has obtained the entry of an order staying all further proceedings in the action pending in the Superior Court of New Jersey against

Sun Oil Company until this action has been disposed of by this Court. A copy of said order is annexed as Schedule "A".

VI.

The voluntary action by the State of New Jersey makes it unnecessary for this Court to consider the necessity of issuing a temporary injunction restraining the State of New Jersey from proceeding with the pending action against the Sun Oil Company in the New Jersey Superior Court.

VII.

New Jersey is aware of this Court's opinion in *Western Union Company vs. Pennsylvania*, 368 U. S. 71 (1961) and believes that the questions raised by that opinion warrant prompt attention by this Court. Therefore New Jersey will not interpose any objection to the exercise by this Court of its original jurisdiction in this case under the authority of Article III, §2 of the Constitution of the United States and 28 U. S. C. A., §1251.

VIII.

Texas alleges in paragraph 7 of its complaint that it intends to institute suit in the courts of Texas to judicially determine that the property held by the Sun Oil Company has escheated to the State of Texas. Fair play in this matter requires that the State of Texas follow the example of the State of New Jersey and stay all further proceedings in the State of Texas until this Court makes final disposition of the application of the State of Texas. If Texas does not voluntarily take such action, defendant, State of New Jersey, prays that this Court issue a temporary injunction restraining the plaintiff, the State of Texas and

Will Wilson, its Attorney General, from proceeding with any action in the State of Texas against the Sun Oil Company pending further order of this Court.

ARTHUR J. SILLS
Attorney General of the State
of New Jersey

THEODORE I. BOTTER
Assistant Attorney General
of New Jersey

CHARLES J. KEHOE
Deputy Attorney General
of New Jersey

Counsel for Defendant,
the State of New Jersey.

Schedule A.**SUPERIOR COURT OF NEW JERSEY.**

CHANCERY DIVISION, MERCER COUNTY

DOCKET No. C-192-61.

STATE OF NEW JERSEY, by DAVID D.
FURMAN, Attorney General of the
State of New Jersey, Plaintiff,

v.s.

SUN OIL COMPANY, a corporation,
Defendant:

Civil Action.
Order Staying
Further Proceedings.

This matter having been opened to the Court by Plaintiff, State of New Jersey by Arthur J. Sills, Attorney General, Martin D. Moroney, Esq., Attorney specially designated to prosecute this action appearing, and it being shown to the Court that the State of Texas has filed in the Supreme Court of the United States a Motion for Leave to File a Complaint in an original action against the State of New Jersey, the State of Pennsylvania, and the Sun Oil Company, a New Jersey corporation where in Texas alleges an exclusive claim to escheat part of the personal property which is the subject of this action, and it being further shown to the Court that this claim by the State of Texas in the United States Supreme Court may be most expeditiously disposed of by a stay of further proceedings in this matter in this Court and defendant, Sun Oil Company, having consented to the entry of this Order, and good cause being shown, it is on this 29th day of May, 1962

ORDERED that, without prejudice to the rights of the parties, all further proceedings in this action be and the same hereby are stayed until to and including thirty days after the date on which the United States Supreme Court makes final disposition of the application of the State of Texas in the case of *State of Texas v. State of New Jersey, et al.*, in the Supreme Court of the United States, October Term, 1961, No. 13 Original.

/s/ FRANK J. KINGFIELD,
J. S. C.

Consent is given to the making and entry of the foregoing Order.

KATZENBACH, GILDEA & RUDNER
Attorneys for Defendant

By: /s/ SAMUEL RUDNER,
SAMUEL RUDNER,

A Member of the Firm.